

APPEAL NO. 040250
FILED MARCH 15, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 5, 2004. The hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on _____; and (2) the claimant had disability from April 7, 2003, through the date of the hearing. The appellant (self-insured) appeals these determinations on sufficiency of the evidence grounds and asserts that the hearing officer erred by excluding its Exhibit No. 8. The claimant asserts that the self-insured's appeal is untimely and, in the alternative, urges affirmance.

DECISION

Affirmed.

We first address the claimant's assertion that the self-insured's appeal is untimely. A written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202(a). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994. Pursuant to Section 410.202(d), Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code are not included in the computation of time in which a request for appeal must be filed. Commission records indicate that the self-insured received the hearing officer's decision on January 9, 2004. Because January 19, 2004, was a holiday listed in Section 662.003, the last date for the self-insured to timely file an appeal was February 2, 2004. The appeal was postmarked on February 2, 2004, and is stamped as received by the Chief Clerk of Proceedings on February 4, 2004. The appeal is, therefore, timely.

As stated above, the self-insured asserts that the hearing officer erred by excluding its Exhibit No. 8. The claimant objected to the admission of this exhibit at the hearing, asserting that it was not exchanged within 15 days after the benefit review conference as required by Rule 142.13(c). The carrier's attorney conceded that it exchanged the exhibit beyond the 15-day exchange period but asserted good cause. The hearing officer found no good cause to admit the exhibit. Upon review of the record, we cannot conclude that the hearing officer abused her discretion by not admitting Self-Insured's Exhibit No. 8. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The self-insured argues, in its appeal, that Section 410.165(b) mandates that a hearing officer “accept all written reports signed by a health care provider.” The self-insured did not raise this argument at the hearing, and we will not address it for the first time on appeal.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer’s determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**RON JOSSELET, EXECUTIVE DIRECTOR
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Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge